

§ 103(f), 30 U.S.C. § 813(f), to accompany a federal mine inspector investigating mines for compliance with safety training requirements" (fn 21, 751 F.2d at 1421).

In fact, in footnote 18 the Court takes a contrary position to Emery's view that a distinction exists between employee and non-employee representatives. The Court stated that "(t)he Council is a non-employee miners' representative. The Mine Act, however, merely refers to 'representatives' and does not articulate any distinction between the rights of employee and non-employee representatives", 751 F.2d at 1421.

Further, in footnote 31 the Court noted: "Our holding is limited to situations where miners' representatives assert an independent right to enter mine property for monitoring purposes. It has no application to instances where representatives assert a statutory right under Section 103(f) to accompany federal mine inspectors investigating mines for compliance with statutory or regulatory safety training requirements", 751 F.2d at 1418.

In Stauffer Chemical Company the question before the Court involved the right of access by EPA's contractor under the Clean Air Act. Stauffer provides no support for Emery's position that the miner's representatives must be employees of the operator in order to be allowed access to mine property. Under § 103(f) Mr. Rabbitt was not an employee of the Secretary. He was an employee of the miners at the Deer Creek mine.

Emery's search warrant cases, commencing with Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967) and its progeny illustrate a principle of law. But the Supreme Court has already ruled that a search warrant is not required under the Mine Act, Donovan v. Dewey, 101 S. Ct. 2534 (1981). The right of the international representative under § 103(f) is to inspect mine property at the same time and in the presence of the MSHA inspector.

On this record it is uncontroverted that the UMWA International was bound by its collective bargaining agreement to Emery and its miners. Further, Emery knew Rabbitt was a UMWA international representative, Rabbitt and UMWA both meet the Secretary's definitions of a miners' representative. Further, miners Fitzek, Addison and Larsen wanted Rabbitt's expertise and assistance. A portion of the local union dues go to Rabbitt's wages.

The foregoing facts cause me to conclude that Rabbitt may participate in a walkaround inspection with the MSHA inspector as a matter of statutory right.

The second issue focuses on whether Emery may condition the entry of the UMWA international representative upon his signing a release and waiver agreement.